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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, D.C. 20536

File: [REDACTED]  
(LIN-01-177-50599)

Office: Nebraska Service Center

Date: **JUN 05 2003**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: Self-represented

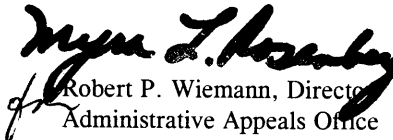
**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to be employed by a United States church as an associate pastor.

The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that it was a qualifying tax exempt organization.

On appeal, the petitioner asserts that because of a lack of understanding, incomplete documentation was submitted at the time the petition was filed. Additional documentation has been submitted.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year

period described in clause (i).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization.

The first issue to be addressed in this proceeding is whether the U.S. organization has tax exempt status.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization....

In his decision, the director noted that the petitioner submitted a copy of Publication 557, Tax Exempt Status for Your Organization, that had several highlighted sections which referred to religious organizations that are exempt automatically if they meet the requirements of section 501(c)(3) and are not required to file Form 1023. The director found that the Publication was insufficient to satisfy the above requirement. On appeal, the petitioner submits an Internal Revenue Service Form 1023, Application for Recognition of Exemption, dated April 15, 2002 for the employing organization, Charleston Community Church in Charleston, Illinois.

The Form 1023, however, cannot be considered as it is dated subsequent to the filing of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be

approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the petitioner has failed to establish that the United States church is tax exempt as a religious organization and, therefore, is ineligible to receive special immigrant classification for any prospective alien employees.

The second issue to be addressed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on May 9, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as an associate pastor from May 9, 1999 until May 9, 2001. The record indicates that the beneficiary last entered the United States on November 22, 2000 as an R-1 nonimmigrant worker. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petitioner submitted a letter from the employing church dated April 18, 2001, which indicated that the petitioner has been employed as an associate pastor at a yearly salary of \$12,000 plus housing and the use of a car. The church described the petitioner's duties as follows:

he assists the pastor in any and all religious rites and functions. He is involved in preaching, teaching classes, serving communion, performing baptisms, dedicating babies, counseling, visitation and acting as international missions coordinator.

In response to a request for additional evidence, the church reiterated the petitioner's duties as a full-time associate pastor and asserted that the petitioner has been in its employ since December 1, 2000 and is being paid a salary of \$13,000 per year plus housing and the use of a car.

The petitioner submitted an "Affidavit of Evidence" dated February 5, 2002 from an official of a foreign church, India Evangelistic & Relief Fellowship, in India. The affidavit indicated that the petitioner was employed as a full-time associate pastor from December 1997 to September 2000, where he assisted in church worships, bible studies, baptisms, visiting hospitals, dedication of babies and served holy communion. The affidavit also indicated

that the petitioner received compensation for his work.

The petitioner provided a certificate of ordination dated December 16, 1997 and other certificates from India Evangelistic & Relief Fellowship. The petitioner also provided several certificates from Teen Missions International, a certificate from Elm Springs Missionary Training Council in Springs, Arkansas, and a certificate of ordination dated November 24, 2000 from Broken Vessel Ministries, Inc. in Urbana, Illinois.

On appeal, the employing church, reaffirms the petitioner's employment at the church since December 2000 and asserts:

prior to his reporting for work, he, of course, had several days of travel from India and acclimation to the new time zone but we consider that his employment began immediately when he left the employment of India Evangelistic and Relief Fellowship.

On review, it cannot be concluded that the petitioner has overcome the director's finding. First, the petitioner failed to provide corroborative evidence of his foreign employment. The petitioner did not provide documentation such as his foreign tax documents or other comparable indicia. The Bureau has no means to verify that the alleged foreign employment was a full-time religious occupation with a qualifying organization. Simply furnishing an "affidavit of evidence" purportedly from a foreign employer is not sufficient to satisfy the petitioner's burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec., 190 (reg. Comm. 1972).

Second, the petitioner has not established that he was employed full-time by any religious organization in the United States from September 2000 to November 30, 2000. Further, contrary to the church's belief that it considers the petitioner to have been in its employ after he left the employment of the foreign church is not sufficient to satisfy the provision which requires proof that the alien had been "continuously carrying on a religious occupation." For this reason as well, the petition may not be approved.

Third, the petitioner's entries into the United States as a B-1 visitor for business during the two year requisite period raises questions as to whether the alien was actually carrying on a religious vocation or occupation in the foreign country. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Beyond the decision of the director, the petitioner has failed to

demonstrate eligibility on another ground.

Regulations at 8 C.F.R. § 204.5(g)(2) require that the prospective employer submit its annual reports, federal tax returns, or audited financial statements to demonstrate the ability to pay the proffered wage. The petitioner has not demonstrated this requirement. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.